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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

JAMES ANDERSON, AS TRUSTEE OF THE LOCAL  
966 HEALTH FUND,

No. \_\_\_\_\_

Plaintiff,

-against-

BEDFORD STUYVESANT RESTORATION CORP.,

Defendant.

**COMPLAINT**

Plaintiff, by his attorneys, Kennedy, Jennik & Murray, P.C., complaining of defendants, respectfully alleges as follows:

**NATURE OF ACTION**

1. This is an action arising under Section 301 of the Labor Management Relations Act (“LMRA”), 29 U.S.C. § 185; the Employee Retirement Income Security Act (“ERISA”), 29 U.S.C. § 1001 *et seq.*, to recover delinquent contributions owed to a multi-employer health fund.

**JURISDICTION AND VENUE**

2. This court has subject matter jurisdiction to hear these claims under Section 301 of the LMRA, 29 U.S.C. § 185; Sections 502(d)(1) and (e)(1) and (2), and 515 of ERISA, 29 U.S.C. §§ 1132(d)(1) and (e)(1) and (2), and 1145; and 28 U.S.C. § 1331. Venue in this District is proper under Section 502(e)(2) of ERISA, 29 U.S.C. § 1132(e)(2) because the Defendant is located in this District.

**PARTIES**

3. Plaintiff James Anderson (“Anderson”) is a Trustee of the Local 966 Health Fund (“Health Fund”). The Health Fund is an “employee welfare benefit plan” under Section 3(3) of ERISA, 29 U.S.C. § 1002(3). The Health Fund is an employee benefit trust fund under Section 302(c)(5) of the LMRA, 29 U.S.C. § 186(c)(5). Anderson is a “fiduciary” of the Fund under Section 3(21) of ERISA, 29 U.S.C. § 1002(21). The Health Fund is administered at 113 University Place, New York, NY 10003, and also at Carday Associates, Inc., 7130 Columbia Gateway Drive, Suite A, Columbia, MD 21406.

4. Defendant Bedford Stuyvesant Restoration Corp. (“BSRC”) is an employer within the meaning of Section 301(a) of the LMRA, 29 U.S.C. § 185(a) and Section 3(5) of ERISA, 29 U.S.C. § 1002(5). BSRC’s principal place of business is at 1368 Fulton Street, Brooklyn, NY 11216, in this district.

**FACTUAL ALLEGATIONS**

5. BSRC and Local 966, International Brotherhood of Teamsters, a labor organization as defined by Section 2(5) of the National Labor Relations Act, 29 U.S.C. § 152(5), were at all material times bound by a collective bargaining agreement (the “Contract”), which required BSRC to remit monthly contributions to the Fund on behalf of each employee covered by the Contract. A copy of the Contract currently in effect is attached hereto as Exhibit A.

6. Article 16 of the Contract provides that BSRC must remit to the Health Fund contributions due and owing by the fifteenth (15th) day of each month. Sections 1, 2 and 3 set forth the contribution rate that BSRC is obligated to make to the Health Fund. The contribution rates required per employee for each month are: \$735.00, effective November 1, 2013; \$760.00, effective November 1, 2014; and \$785.00, effective November 1, 2015.

7. Article IV, Section 3 of the Health Fund's Trust Agreement, which is attached to the Contract, requires the Trustees to collect interest at a rate determined by them. The Trustees have adopted Delinquency Guidelines which impose an interest rate of 12% per annum on delinquent contributions. A copy of the Delinquency Guidelines is attached as Exhibit B.

8. BSRC failed to remit contributions owed to the Health Fund in a timely manner for the period September 2008 to September 2016 in violation of the Contract. Interest at the rate of 12% per annum was imposed by the Health Fund for those late contributions.

9. In April 2010, BSRC submitted a check to the Health Fund for \$610.00 which was returned for insufficient funds and was not replaced.

10. The required contribution rate increased on November 1, 2011. BSRC's contribution payment for November 2011 failed to account for the increase, resulting in \$450.00 remaining due for that month.

11. In December 2013, BSRC submitted a report to the Health Fund showing that it owed \$710.00 more than it paid for that month.

12. The required contribution rate increased on November 1, 2013. BSRC's contribution payment for June 2014 failed to account for the increase, resulting in \$325.00 remaining due for that month.

13. The required contribution rate increased on November 1, 2015. BSRC's contribution payments for November and December 2015 and January and February 2016 failed to account for the increase, resulting in \$630.00 remaining due for those months.

14. In May, 2016, BSRC submitted a report to the Health Fund showing that it owed \$800.00 more than it paid.

15. BSRC now owes the Health Fund \$5,584.52 in delinquent contributions and interest as shown in the attached as Exhibit C. (\$526.50, owed pursuant to an audit, as detailed on page 3 of Exhibit C, was deducted from the \$6,111.02 total shown on page 4 of Exhibit C, as duplicative, as those charges represent interest and liquidated damages, which are to be applied to the delinquency amount of \$5,584.52, as provided by ERISA Section 502(g).)

**FIRST CAUSE OF ACTION**

16. Plaintiff repeats and realleges the allegations stated above.

17. BSRC's failure to remit monthly contributions owed in a timely manner violates Section 301 of the LMRA and Section 515 of ERISA, 29 U.S.C. § 1145.

**RELIEF**

**WHEREFORE**, the Plaintiff respectfully requests the following relief:

- (a) Judgment in its favor in the sum of \$5,584.52 as specified above;
- (b) Interest on the amount owed the Plan in accordance with Section 502(g)(b)(B) of ERISA, 29 U.S.C. § 1132(g)(2)(B);
- (c) Liquidated damages as costs of collection computed as provided in Section 502(g)(2)(C) of ERISA, 29 U.S.C. § 1132(g)(2)(C);
- (d) Attorneys' fees and costs in accordance with Section 502(g)(2)(D) of ERISA, 29 U.S.C. § 1132(g)(2)(D); and
- (e) Such other and further relief as the Court may deem just and proper in accordance with Section 502(g)(2)(E) of ERISA, 29 U.S.C. § 1132(g)(2)(E).

Dated: October 11, 2016  
New York, New York

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